

BOARD OF APPEALS CASE NO. 5331

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BEFORE THE

APPLICANT: Terry & Martha Maczko

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ZONING HEARING EXAMINER

REQUEST: Variance to construct an in-ground swimming pool within the 75 foot Natural Resource District; 516 David Drive, Bel Air

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OF HARFORD COUNTY

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HEARING DATE: April 7, 2003

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Hearing Advertised

Aegis: 2/26/03 & 3/5/03

Record: 2/28/03 & 3/7/03

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Terry & Martha Maczko, are requesting a variance, pursuant to Section 267-41D(5)(e) and (6) of the Harford County Code, to allow an in-ground pool within the 75 foot Natural Resources District Buffer in an R2/Urban Residential District.

The subject parcel is located at 516 David Drive, Bel Air, MD 21015 and is within the Kings Charter subdivision. The parcel is more particularly identified on Tax Map 56, Grid 1E, Parcel 232, Lot 72. The parcel consists of 10,660 square feet, is zoned R2/Urban Residential and is entirely within the First Election District.

Martha Maczko appeared and testified that she and her husband want to build an in-ground pool to the rear of their home. The pool would measure 16 feet by 32 feet and would have an average depth of 4 to 6 feet. No diving boards are proposed. There are a number of other pools located in the neighborhood (one is 4 doors away) and she and her family chose a relatively flat lot so that a pool could be placed there. However, the Applicants learned, upon seeking a permit, that a natural resource buffer area extended from the stream located to the rear of the home into the back yard and restricts construction on over on-half of the rear yard. There is a creek located to the rear of the Applicants' property but it is dry most of the time. The shrubbery is of poor quality in the creek area. Only a very few lots in the entire subdivision are impacted by this creek and the associated buffer requirements. The proposed pool has been pulled as close to the house as possible but approximately two-thirds of the pool area will still encroach into the NRD buffer. This area of the property is currently lawn space.

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In an effort to mitigate any possible impact to the buffer resulting from construction of a pool, the Applicants are suggesting additional landscaping to the rear of the pool in the direction of the creek area and spanning the width of the yard. Plantings will include Hoogendorn Holly, Meyers yew, China Girl Holly, Otto Luyken and Arborvitae. The Applicant felt that her parcel was unique compared to others in the neighborhood because the other yards are not impacted by this stream and associated buffer and could build a pool like the one proposed without any need for a variance. Additionally the Applicant felt that no adverse impacts would be associated with her pool and that the proposed landscaping would mitigate any possible adverse impact resulting from the slight encroachment of the pool into the NRD buffer area.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. The Department found that the subject property was unique. There is an intermittent stream located to the rear of the Applicants' home. This stream impacts only a few of the lots in the entire subdivision. This lot and two others are the most effected by the stream and associated buffer. Mr. McClune agreed that a landscaping plan would provide adequate mitigation with regard to any adverse impacts associated with the pool. Further, the Department agreed with the Applicants that there was no other practical location for the proposed pool in any area of the yard that would also not require a variance.

There were no persons that appeared in opposition to the subject request.

## **CONCLUSION**

The Applicants are requesting a variance pursuant to Section 267-41D(5)(e) and (6) of the Harford County Code, to allow an in-ground pool within the 75 foot Natural Resources District Buffer in an R2/Urban Residential District.

Section 267-41D(5)(e) provides:

- (5) Conservation requirements. The following conservation measures are required within this district:
  - (e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

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**Section 267-41D(6) provides:**

- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.**

**Harford County Code Section 267-11 permits variances and provides:**

**“Variances from the provisions or requirements of this Code may be granted if the Board finds that:**

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The appropriate standard for the grant of a variance in cases that involve the Natural Resource District does not differ greatly from other variance provisions. The primary difference is measuring impacts to the district itself recognizing that the natural resource district can involve sensitive environmental features that require greater protection than other areas. In that regard, the ordinance requires comments be solicited from the Zoning Administrator, the Harford Soil Conservation Service and the Department of Natural Resources (Department of the Environment). The Harford Soil Conservation Service did provide comments that indicate that the pool will not adversely impact the NRD if disturbance is minimized and additional plantings are made to mitigate impacts. The Department of the Environment did not provide comments (usually indicating no opposition to a given proposal). The Zoning Administrator’s opinion was offered by Mr. McClune who recommended approval provided disturbance was minimized and landscaping mitigation was provided.

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This particular property is unique compared to other lots in the neighborhood. Nearly 2000 square feet or 20% of the entire lot is encumbered by NRD buffer area. Without a variance nothing could be built in this area of the lot which is most of the rear yard. The Harford County Code anticipates that disturbance to the NRD can be done in some cases if proper measures are taken to protect sensitive environmental features. In this case it appears to the Hearing Examiner that there are few if any impacts to the NRD area itself and those may be mitigated by the landscaping additions proposed by the Applicant. Additionally, there is more than adequate distance between this Applicants' property and the closest property located to the rear of the Applicants' lot to satisfy the intention of the Code in providing adequate separation between parcels.

For the foregoing reasons, the Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. The Applicants obtain any and all necessary permits and inspections.
2. The Applicant shall submit a formal landscaping plan to the Department of Planning and Zoning for review and approval.
3. The landscaping shall be planted within 6 months after completion of the pool and must be maintained by the Applicant.
4. The pool must be constructed in substantial compliance with the Applicants' site plan submitted as part of the application in this case.

Date MAY 5, 2003

William F. Casey  
Zoning Hearing Examiner